

**PATENT APPLICATION
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INVENTOR(S): Richard G. Sevier

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SUBJECT: SELECTING A DIGITAL IMAGE

THE COMMISSIONER OF PATENTS
ALEXANDRIA, VA 22313-1450

APPELLANTS'/APPLICANTS' OPENING BRIEF ON APPEAL

1. REAL PARTY IN INTEREST.

The real party in interest is Hewlett-Packard Development Company, LP, a limited partnership established under the laws of the State of Texas and having a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holding, LLC.

2. RELATED APPEALS AND INTERFERENCES.

There are no other appeals or interferences known to Appellants, Appellants' legal representative or the Assignee which will affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

3. STATUS OF CLAIMS.

Claims 1, 5-10, 20, 24-29, 39 and 50 are pending but stand rejected. Claims 2-4, 11-19, 21-23, 30-38, and 40-49 have been cancelled. The rejections of all pending claims are appealed.

4. STATUS OF AMENDMENTS.

No amendments have been filed after the final action was entered. All previous amendments have been entered.

5. SUMMARY OF CLAIMED SUBJECT MATTER.

Claim 1 recites a digital image selection method that includes obtaining a first digital image of a first side of a physical object. See, e.g., Specification, paragraph [0039], page 9, lines 17-24. That physical object is a first of an ordered set of physical objects. See, e.g., Specification, paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number). The first digital object is examined to determine if it is substantially blank. See, e.g., Specification, paragraph [0039], page 9, lines 17-24. If the first digital image is not substantially blank, a first set of digital images is obtained. See, e.g., Specification, paragraph [0041.1]

(this paragraph was added by amendment so it cannot be referenced by page and line number). Each digital image of the first set is a digital image of a first side of a physical object of the ordered set of physical objects. See, e.g., Specification , paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number). The first set of digital images is then sent for processing. See, e.g., Specification , paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number).

Only if the first digital image is substantially blank, a second digital image of a second side of the physical object is obtained. See, e.g., Specification , paragraphs [0040]-[0041.1] (paragraph 41.1 was added by amendment so it cannot be referenced by page and line number). Again, the physical object is the first of the ordered set of physical objects. See, e.g., Specification , paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number). The second digital image is examined to determine if it is substantially blank. See, e.g., Specification , paragraphs [0040]-[0041.1] (paragraph 41.1 was added by amendment so it cannot be referenced by page and line number).

If the first digital image is substantially blank and the second image is not substantially blank, a second set of digital images is obtained. See, e.g., Specification , paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number). Each digital image of the second set is a digital image of a second side of a physical object of the ordered set of physical objects. See, e.g., Specification , paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number). The second set is then sent for processing. See, e.g., Specification , paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number).

Claim 20 recites a computer readable medium having instructions for implementing a method that includes obtaining a first digital image of a first side of a physical object. See, e.g., Specification , paragraph [0039], page 9, lines 17-24. That physical object is a first of an ordered set of physical objects. See, e.g., Specification , paragraph [0041.1] (this paragraph was added by amendment so it cannot be

referenced by page and line number). The first digital object is examined to determine if it is substantially blank. See, e.g., Specification , paragraph [0039], page 9, lines 17-24. If the first digital image is not substantially blank, a first set of digital images is obtained. See, e.g., Specification , paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number). Each digital image of the first set is a digital image of a first side of a physical object of the ordered set of physical objects. See, e.g., Specification , paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number). The first set of digital images is then sent for processing. See, e.g., Specification , paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number).

Only if the first digital image is substantially blank, a second digital image of a second side of the physical object is obtained. See, e.g., Specification , paragraphs [0040]-[0041.1] (paragraph 41.1 was added by amendment so it cannot be referenced by page and line number). Again, the physical object is the first of the ordered set of physical objects. See, e.g., Specification , paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number). The second digital image is examined to determine if it is substantially blank. See, e.g., Specification , paragraphs [0040]-[0041.1] (paragraph 41.1 was added by amendment so it cannot be referenced by page and line number).

If the first digital image is substantially blank and the second image is not substantially blank, a second set of digital images is obtained. See, e.g., Specification , paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number). Each digital image of the second set is a digital image of a second side of a physical object of the ordered set of physical objects. See, e.g., Specification , paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number). The second set is then sent for processing. See, e.g., Specification , paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number).

Claim 39 recites a system for digital image selection. The system includes an image manager and a content module. See, e.g., Specification, paragraph [0024], page 5, lines 18-32 and Fig. 3. The image manager is operable to obtain a first digital image of a first side of a physical object and a second digital image of a second side of the physical object. See, e.g., Specification, paragraph [0027], page 6, lines 15-24. The content module operable to examine the first digital image to determine if it is substantially blank. See, e.g., Specification, paragraph [0024]-[0025], page 5, line 18 through page 6, line 10. The image manager is further operable to send the second digital image for processing if the first digital image is substantially blank and to send the first digital image for processing if the first digital image is not substantially blank. See, e.g., Specification, paragraph [0027]-[0028], page 6, line 15 through page 7, line 2. The physical object is a first of an ordered set of physical objects. See, e.g., Specification, paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number). The image manager is further operable to, if the first digital image is determined to not be substantially blank, obtain a first set of digital images. See, e.g., Specification, paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number). Each digital image of the first set being a digital image of a first side of a physical object of the ordered set of physical objects. See, e.g., Specification, paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number). The image manager then sends the first set of digital images for processing.

The image manager is further operable to, only if the first digital image is substantially blank as determined by the content module, obtain a second digital image of a second side of the physical object, the physical object being the first of the ordered set of physical objects. See, e.g., Specification, paragraphs [0040]-[0041.1] (paragraph 41.1 was added by amendment so it cannot be referenced by page and line number). The image manager is further operable to, if the first digital image is determined to be substantially blank and the second image is not substantially blank as determined by the content module, obtain a second set of digital images. See, e.g., Specification, paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number). Each digital image of the second set being a

digital image of a second side of a physical object of the ordered set of physical objects. See, e.g., Specification , paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number). The image manager then sends the second set of digital images for processing. See, e.g., Specification , paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number).

Claim 50 recites a system for digital image selection. The system includes various means for performing various functions. Included are a means for obtaining a first digital image of a first side of a physical object and a second digital image of a second side of the physical object. See, e.g., Specification, paragraph [0027], page 6, lines 15-24. The system includes a means for examining the first digital image to determine if it is substantially blank. See, e.g., Specification, paragraph [0024]-[0025], page 5, line 18 through page 6, line 10. The system includes a means for, if the first digital image is not substantially blank, obtaining a first set of digital images and sending the first set of digital images for processing. See, e.g., Specification , paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number). Each digital image of the first set is a digital image of a first side of a physical object of the ordered set of physical objects. See, e.g., Specification , paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number).

The system includes means for, only if the first digital image is substantially blank, obtaining a second digital image of a second side of the physical object. See, e.g., Specification , paragraphs [0040]-[0041.1] (paragraph 41.1 was added by amendment so it cannot be referenced by page and line number). Again, the physical object is the first of the ordered set of physical objects. See, e.g., Specification , paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number). The second digital image is examined to determine if it is substantially blank. See, e.g., Specification , paragraphs [0040]-[0041.1] (paragraph 41.1 was added by amendment so it cannot be referenced by page and line number).

The system also includes a means for, if the first digital image is substantially blank and the second image is not substantially blank, obtaining a second set of digital images and sending the second set of digital images for processing. *See, e.g., Specification* , paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number). Each digital image of the second set is a digital image of a second side of a physical object of the ordered set of physical objects. *See, e.g., Specification* , paragraph [0041.1] (this paragraph was added by amendment so it cannot be referenced by page and line number).

6. GROUNDS FOR REJECTION TO BE REVIEWED.

A. Claims 1, 5-8, 20, 24-27, 39, and 50 stand rejected under 35 U.S.C. 103 as being unpatentable over USPN 6,169,873 issued to Connolly.

B. Claims 9 and 28 stand rejected under 35 USC §103 as being unpatentable over Connolly in view of US Pub 2003/0048470 to Garcia.

C. Claims 10 and 29 stand rejected under 35 USC §103 as being unpatentable over Connolly in view of Okubo and in further view of US Pub 2005/0200903 to Nakano.

7. ARGUMENT.

Grounds For Rejection A – Claims 1, 5-8, 20, 24-27, 39, and 50 stand rejected under 35 U.S.C. 103 as being unpatentable over USPN 6,169,873 issued to Connolly.

CLAIM REJECTIONS – 35 USC § 103: Claims 1, 5-8, 20, 24-27, 39, and 50 stand rejected under 35 U.S.C. 103 as being unpatentable over USPN 6,169,873 issued to Connolly.

Claim 1 is directed to a digital image selection method and as, as amended, recites the following:

1. obtaining a first digital image of a first side of a physical object, the physical object being a first of an ordered set of physical objects;
2. examining the first digital image to determine if it is substantially blank;
3. if the first digital image is not substantially blank, obtaining a first set of digital images, each digital image of the first set being a digital image of a first side of a physical object of the ordered set of physical objects, and sending the first set of digital images for processing;
4. only if the first digital image is substantially blank, obtaining a second digital image of a second side of the physical object, the physical object being the first of the ordered set of physical objects and examining the second digital image to determine if it is substantially blank; and
5. if the first digital image is substantially blank and the second image is not substantially blank, obtaining a second set of digital images, each digital image of the second set being a digital image of a second side of a physical object of the ordered set of physical objects, and sending the second set of digital images for processing.

To summarize, a digital image of the first side of an initial page of a set of pages is obtained. It is determined if that digital image is blank. Only if blank, a second digital image of the second side of the initial sheet is obtained. Then, if the first digital image is determined to be blank and the second digital image is not, the second sides of set of pages are obtained and sent for processing. If the first digital image not blank, digital images of the first sides of set of pages are obtained and sent for processing. In other words, if the first digital image is not blank the first set of digital images are obtained and sent for processing. Only if the first digital image is blank, the second digital image is obtained. If the second digital image is not blank, digital images of the second sides of set of pages are obtained and sent for processing.

At page 3 of the September 18, 2008 office action, the Examiner admits that Connolly does not "disclose checking only one image for face orientation, and then

making the assumption for the rest of the sheets in the stack." Instead, the Examiner contends that it would be modify Connolly to "to provide checking only one image for face orientation, and then making the assumption for the rest of the sheets in the stack for the purpose of increasing speed. The Appellant, respectfully disagrees.

Connolly, at column 6, lines 31-33 scanning both sides of a sheet in steps 33-35 before and determination is made as to whether either side is blank in steps 41 and 43. Such is required to achieve Connolly's express purpose of determining whether or not sheets placed in a sheet feeder have a simplex or a duplex image presentation. See, e.g., Connolly, Abstract. Further, Connolly expressly states:

Referring to FIG. 2, a document provided to the sheet feeder 13 (FIG. 1) is scanned in order to determine, among other required functions, if images appear on one or both sides of the first pages.

Connolly, col. 6, lines 28-31 (emphasis added). In other words, Connolly expressly labels the function of determining whether or not a document placed on a sheet feeder is double sided as required.

The US Supreme Court has recently stated:

[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. Although common sense directs one to look with care at a patent application that claims as innovation the combination of two known devices according to their established functions, it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. This is so because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.

KSR Int'l Co. v. Teleflex, Inc., 550 U.S. ___, 127 S. Ct. 1727 (April 30, 2007) (pages 15-16 of the Bench Opinion). Such is consistent with MPEP § 2143.01(V) which provides:

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no

suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)

MPEP §2143.01(V).

At a minimum, the Examiner must, in light of KSR, establish that a person of ordinary skill in the art would have reasonably modified Connolly in the manner suggest. The Appellant respectfully maintains that such a showing cannot be made. Connolly requires that both sides of at least the first sheet of a document be scanned to determine whether or not the document is double sided. Modifying Connolly to scan the second side only if the first side is not blank is not an option. The modification would render Connolly unsuitable for its intended purpose. Thus one of ordinary skill in the art would not be inclined to modify Connolly in the manner suggested by the Examiner.

For at least this reason, Claim 1 and Claims 5-8 are patentable over Connolly.

Claim 20 is directed to a computer readable medium having instructions for implementing the method of Claim 1. For at least the same reasons Claim 1 is patentable, so are Claim 20 and Claims 23-29 which depend from Claim 20.

Claim 39 is directed to a system having various components configured to implement the method of Claim 1. For at least the same reasons Claim 1 is patentable, so is Claim 39.

Claim 50 is directed to a system having various means for implementing the method of Claim 1. For at least the same reasons Claim 1 is patentable, so is Claim 50.

Grounds For Rejection B – Claims 9 and 28 stand rejected under 35 USC §103 as being unpatentable over Connolly in view of US Pub 2003/0048470 to Garcia.

Claims 9 and 28 were rejected as being unpatentable over Connolly in view of US Pub 2003/0048470 to Garcia. Claims 9 and 28 each depend from an allowable base and is allowable based at least in part on that dependency.

Grounds For Rejection C – Claims 10 and 29 stand rejected under 35 USC §103 as being unpatentable over Connolly in view of Okubo and in further view of US Pub 2005/0200903 to Nakano.

Claims 10 and 29 were rejected as being unpatentable over Connolly in view of Okubo and in further view of US Pub 2005/0200903 to Nakano. The present application was filed November 3, 2003. Nakano was not published until July 29, 2004. Thus, Nakano qualifies as prior art only under §102(e). Nakano and the present application share a common assignee – Hewlett-Packard Development Company, L.P. (HPDC). Evidence of the assignments and common ownership can be found as follows:

- Present Application – Assignment from the inventor to HPDC recorded at Reel/Frame 014396/0442,
- Nakano – Assignment from the inventors to Hewlett-Packard Company recorded at Reel/Frame 013772/0053. Assignment from Hewlett-Packard Company to HPDC recorded at Reel/Frame 013776/0928.

Consequently, 35 USC §103(c) disqualifies Nakano as prior art under §103(a). For at least this reason, Claims 10 and 29 are patentable over the cited references.

CONCLUSION: Claims 1, 5-10, 20, 24-29, 39 and 50 are felt to be in condition for allowance. Consequently, early and favorable action allowing these claims and passing the application to issue is earnestly solicited.

Respectfully submitted,

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APPENDIX OF CLAIMS INVOLVED IN THE APPEAL

1. (previously presented) A digital image selection method, comprising:
obtaining a first digital image of a first side of a physical object, the physical object being a first of an ordered set of physical objects;
examining the first digital image to determine if it is substantially blank;
if the first digital image is not substantially blank, obtaining a first set of digital images, each digital image of the first set being a digital image of a first side of a physical object of the ordered set of physical objects, and sending the first set of digital images for processing;
only if the first digital image is substantially blank, obtaining a second digital image of a second side of the physical object, the physical object being the first of the ordered set of physical objects and examining the second digital image to determine if it is substantially blank;
if the first digital image is substantially blank and the second image is not substantially blank, obtaining a second set of digital images, each digital image of the second set being a digital image of a second side of a physical object of the ordered set of physical objects, and sending the second set of digital images for processing.
2. (cancelled)
3. (cancelled)
4. (cancelled)
5. (original) The method of Claim 1, further comprising discarding the first digital image if it is substantially blank.
6. (previously presented) The method of Claim 1, wherein the steps of obtaining the first and second sets of digital images comprise:

scanning the first side of each physical object in the ordered set to generate the first set of digital images; and

scanning the second side of each physical object in the ordered set to generate the second set of digital images.

7. (previously presented) The method of Claim 1, wherein:

sending the second set of digital images for processing comprises sending the second set of digital images to be printed if the first digital image is substantially blank; and

sending the first set of digital images for processing comprises sending the first set of digital images to be printed if the first digital image is not substantially blank.

8. (previously presented) The method of Claim 1, wherein:

sending the second set of digital images for processing comprises sending the second set of digital images to be incorporated in a facsimile transmission if the first digital image is substantially blank; and

sending the first set of digital images for processing comprises sending the first set of digital images to be incorporated in a facsimile transmission if the first digital image is not substantially blank.

9. (previously presented) The method of Claim 1, wherein:

sending the second set of digital images for processing comprises sending the second set of digital images to be incorporated in an electronic mail message if the first digital image is substantially blank; and

sending the first set of digital images for processing comprises sending the first set of digital images to be incorporated in an electronic mail message if the first digital image is not substantially blank.

10. (previously presented) The method of Claim 1, wherein:

sending the set of digital images image for processing comprises sending the second set of digital images to be archived if the first digital image is substantially blank;
and

sending the first set of digital images for processing comprises sending the first set of digital images to be archived if the first digital image is not substantially blank.

11. (cancelled)

12. (cancelled)

13. (cancelled)

14. (cancelled)

15. (cancelled)

16. (cancelled)

17. (cancelled)

18. (cancelled)

19. (cancelled)

20. (previously presented) A computer readable medium having instructions for:
obtaining a first digital image of a first side of a physical object, the physical object being a first of an ordered set of physical objects;

examining the first digital image to determine if it is substantially blank;

if the first digital image is not substantially blank, obtaining a first set of digital images, each digital image of the first set being a digital image of a first side of a

physical object of the ordered set of physical objects, and sending the first set of digital images for processing;

only if the first digital image is substantially blank, obtaining a second digital image of a second side of the physical object, the physical object being the first of the ordered set of physical objects and examining the second digital image to determine if it is substantially blank; and

if the first digital image is substantially blank and the second image is not substantially blank, obtaining a second set of digital images, each digital image of the second set being a digital image of a second side of a physical object of the ordered set of physical objects, and sending the second set of digital images for processing.

21. (cancelled)

22. (cancelled)

23. (Cancelled)

24. (original) The medium of Claim 20, having further instructions for discarding the first digital image if it is substantially blank.

25. (previously presented) The medium of Claim 20, wherein the instructions for obtaining the first and second sets of digital images include instructions for:

scanning the first side of each physical object in the ordered set to generate the first set of digital images; and

scanning the second side of each physical object in the ordered set to generate the second set of digital images.

26. (previously presented) The medium of Claim 20, wherein the instructions for sending the second set of digital images for processing include instructions for sending the second set of digital images to be printed if the first digital image is substantially blank; and

sending the first set of digital images for processing include instructions for sending the first set of digital images to be printed if the first digital image is not substantially blank.

27. (previously presented) The medium of Claim 20, wherein the instructions for: sending the second set of digital images for processing include instructions for sending the second set of digital images to be incorporated in a facsimile transmission if the first digital image is substantially blank; and

sending the first set of digital images for processing include instructions for sending the first set of digital images to be incorporated in a facsimile transmission if the first digital image is not substantially blank.

28. (previously presented) The medium of Claim 20, wherein the instructions for: sending the second set of digital images for processing include instructions for sending the second set of digital images to be incorporated in an electronic mail message if the first digital image is substantially blank; and

sending the first set of digital images for processing include instructions for sending the first set of digital images to be incorporated in an electronic mail message if the first digital image is not substantially blank.

29. (previously presented) The medium of Claim 20, wherein the instructions for: sending the second set of digital images for processing include instructions for sending the second set of digital images to be archived if the first digital image is substantially blank; and

sending the first set of digital images for processing include instructions for sending the first set of digital images to be archived if the first digital image is not substantially blank.

30. (cancelled)

31. (cancelled)

32. (cancelled)

33. (cancelled)

34. (cancelled)

35. (cancelled)

36. (cancelled)

37. (cancelled)

38. (cancelled)

39. (previously presented) A system for digital image selection, comprising:
an image manager operable to obtain a first digital image of a first side of a physical object and a second digital image of a second side of the physical object;
a content module operable to examine the first digital image to determine if it is substantially blank and to examine the second digital image to determine if it is substantially blank; and

wherein the image manager is further operable to send the second digital image for processing if the first digital image is substantially blank and to send the first digital image for processing if the first digital image is not substantially blank;

wherein the physical object is a first of an ordered set of physical objects and wherein the image manager is further operable to:

if the first digital image is determined to not be substantially blank by the content module, obtain a first set of digital images, each digital image of the first set being a digital image of a first side of a physical object of the ordered set of physical objects, and send the first set of digital images for processing;

only if the first digital image is substantially blank as determined by the content module, obtain a second digital image of a second side of the physical object, the physical object being the first of the ordered set of physical objects;

if the first digital image is substantially blank and the second image is not substantially blank as determined by the content module, obtain a second set of digital images, each digital image of the second set being a digital image of a second side of a physical object of the ordered set of physical objects, and send the second set of digital images for processing.

40. (cancelled)

41. (cancelled)

42. (cancelled)

43. (cancelled)

44. (cancelled)

45. (cancelled)

46. (cancelled)

47. (cancelled)

48. (cancelled)

49. (cancelled)

50. (previously presented) A system for digital image selection, comprising:

- a means for obtaining a first digital image of a first side of a physical object and a second digital image of a second side of the physical object;
- a means for examining the first digital image to determine if it is substantially blank; and
- a means for, if the first digital image is not substantially blank, obtaining a first set of digital images, each digital image of the first set being a digital image of a first side of a physical object of the ordered set of physical objects and, sending the first set of digital images for processing; and
- a means for, only if the first digital image is substantially blank, obtaining a second digital image of a second side of the physical object, the physical object being the first of the ordered set of physical objects and examining the second digital image to determine if it is substantially blank;
- a means for, if the first digital image is substantially blank and the second image is not substantially blank, obtaining a second set of digital images, each digital image of the second set being a digital image of a second side of a physical object of the ordered set of physical objects, and sending the second set of digital images for processing.

Evidence Appendix

There is no extrinsic evidence to be considered in this Appeal. Therefore, no evidence is presented in this Appendix.

Related Proceedings Appendix

There are no related proceedings to be considered in this Appeal. Therefore, no such proceedings are identified in this Appendix.